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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/970,389 | 10/02/2001 | Donald J. Merkley | HARD1.015A | 9683 |
| 20995 | 7590 | 03/01/2005 | EXAMINER | |
| KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614 | | | ALVO, MARC S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1731 | |

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/970,389 | MERKLEY ET AL |
| | Examiner Steve Alvo | Art Unit 1731 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 25-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 25-48 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2-2004</u> . | 6) <input type="checkbox"/> Other: ____. |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over NAJI et al (6,030,447) in view of the ADMITTED PRIOR ART (specification, paragraph [0031] and Table 1) with or without WINGERSON (6,419,788).

NAJI et al teaches a composite building material comprising cellulose fibers which reinforce he product (column 2, lines 7-19, and an aggregate (siliceous material. see abstract), a density modifier (column 2, line 21) and one or more additives (column 2. lines 20-31). The ADMITTED PRIOR ART teaches that conventional pulping and washing at conventional temperatures (55-60 °C) results in cellulose fibers, e.g. the cellulose fibers of NAJI et al, having a COD content of 5 kg/ton. The claimed "less than about 5 kg/ton" (emphasis added) would read on 5 kg/ton ± 10%, e.g. "less than 4.5 to 5.5 kg/ton". The "5.5 kg/ton", which reads on the claimed "less than 4.5 to 5.5 kg/ton" does not define over the washing of the ADMITTED PRIOR ART or the product of NAJI et al. If necessary, WINGERSON teaches producing substantially pure cellulose (column 3, line 56) by first treating cellulosic material with steam and then washing with alkaline hot wash water containing dissolved oxygen at elevated temperatures, e.g. 180 to 240 °C , to remove decompose, mobilize and remove lignin, extractives and residual hemicellulose, e.g. the COD's. It would have been obvious to the artisan to further remove the COD's of NAJI et al and/or the ADMITTED PRIOR ART using the elevated washing temperatures of WINGERSON. Such a washing would lower the COD's of NAJI et al

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to less than 5 kg/ton. It is noted that the instant process can also use oxidized wash liquor, e.g. the same wash water used by WINGERSON, see instant specification, page 3, [0009].

The disclosure is objected to because of the following informalities: Page 7, the Serial Numbers and status are missing from the cited Applications.

Appropriate correction is required.

SVEDMAN cited of interest to teach washing pulp at temperatures of 70 to 75 °C.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 24, 2005 has been entered.

Applicant's arguments are moot due to the new art rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Alvo whose telephone number is 571-272-1185. The examiner can normally be reached on 5:45 AM - 2:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steve Alvo
Primary Examiner
Art Unit 1731

msa